

104TH CONGRESS
2D SESSION

H. R. 3100

To limit the authority of Federal courts to fashion remedies that require local jurisdictions to assess, levy, or collect taxes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 1996

Mr. MANZULLO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To limit the authority of Federal courts to fashion remedies that require local jurisdictions to assess, levy, or collect taxes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Judicial Mandate and
5 Remedy Clarification Act of 1996.”

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) a variety of effective and appropriate judi-
9 cial remedies are available for the full redress of
10 legal and constitutional violations under existing law,

1 and the imposition, increase, levying or assessment
2 of taxes by courts is neither necessary nor appro-
3 priate for the full and effective exercise of remedies
4 imposed pursuant to Federal courts jurisdiction;

5 (2) the imposition, increase, levying, or assess-
6 ment of taxes by judicial order is not an appropriate
7 exercise of the judicial power under the Constitution,
8 and is incompatible with the traditional principles of
9 American law and government and the basic Amer-
10 ican principle that taxation without representation is
11 tyranny because Federal courts are unelected offi-
12 cials, not answerable to the popular will;

13 (3) Federal courts exceed the proper boundaries
14 of their limited jurisdiction and authority under the
15 Constitution, and impermissibly intrude on the legis-
16 lative function in a democratic system of govern-
17 ment, when they issue orders requiring or resulting
18 in the imposition, increase, levying, or assessment of
19 new taxes or existing taxes;

20 (4) no court should enter an order, not should
21 there be any settlement, remedying a legal or con-
22 stitutional violation, by imposing, creating, increas-
23 ing, levying, or assessing any tax for the enforce-
24 ment thereof, nor can the court enter an order, nor
25 can there be any settlement, which has the effect of

1 imposing, creating, increasing, levying, or assessing
2 any tax;

3 (5) settlement agreements or orders entered by
4 Federal courts should be fashioned within the frame-
5 work of current budgetary restraints of any State or
6 political subdivisions thereof;

7 (6) the Congress retains the authority under ar-
8 ticle III, sections 1 and 2, or the Constitution to
9 limit and regulate the jurisdiction of the inferior
10 Federal courts, and such authority includes the
11 power to limit the remedial authority of such courts;

12 (7) nothing contained herein shall otherwise
13 validate, approve, legalize, or encourage the imposi-
14 tion of a tax, levy, or assessment by a Federal judge;

15 (8) notwithstanding these findings, the Con-
16 gress acknowledges that in certain circumstances,
17 the Federal courts have abrogated constitutional au-
18 thority with regard to judicially mandating a tax,
19 levy or assessment to ascertain a remedy, but that
20 should the Federal courts continue on in such a
21 manner, the following rules shall be met prior to en-
22 tering any order or settlement remedying a Federal
23 or State common law, statutory or constitutional vio-
24 lation by imposing, creating, increasing, levying or
25 assessing any tax for the enforcement thereof; nor

1 shall there by any settlement or order which has the
2 effect of imposing, creating, increasing, levying or
3 assessing any tax:

4 **SEC. 3. LIMITATION ON FEDERAL COURT REMEDIES.**

5 Section 1343 of title 28, United States Code, is
6 amended—

7 (1) by redesignating subsection (b) as sub-
8 section (c); and

9 (2) by inserting after subsection (a) the follow-
10 ing new subsection:

11 “(b)(1) Notwithstanding any other law, there shall be
12 no settlement nor shall the district courts order any State,
13 or political subdivision of a State, to impose, increase,
14 levy, or assess any tax; nor shall there be any settlement
15 or order which has the effect of imposing, creating, in-
16 creasing, levying or assessing any tax, for the purpose of
17 enforcing any Federal or State common law, statutory, or
18 constitutional right or law unless the court finds by clear
19 and convincing evidence, that—

20 “(A) there are no other means available to rem-
21 edy the deprivation of rights or laws, and the pro-
22 posed imposition, increase, levying, or assessment is
23 narrowly tailored to remedy the specific deprivation
24 at issue;

1 “(B) the tax will not contribute to or exacer-
2 bate the deprivation intended to be remedied;

3 “(C) the proposed tax will not result in a loss
4 of revenue for the political subdivision in which it is
5 assessed, levied, or collected;

6 “(D) the proposed tax will not result in the loss
7 or depreciation of property values of the taxpayer so
8 affected;

9 “(E) the proposed tax will not conflict with the
10 applicable laws with respect to the maximum rate of
11 taxation as determined by the appropriate political
12 subdivisions, and will not exceed the lower of ei-
13 ther—

14 “(i) the proposed taxation rate; or

15 “(ii) the total of aggregate taxes that may
16 be imposed—including taxes of other State and
17 local units of governmental bodies and for the
18 purposes of implementing such order may not
19 exceed the Cost of Living as measured by Sec-
20 tion 215(i) of the Social Security Act, plus five
21 percent per annum; and,

22 “(F) plans submitted by State and local au-
23 thorities will not effectively redress the deprivations
24 at issue.

1 “(2) A finding under paragraph (1) shall be subject
2 to immediate interlocutory de novo review and shall be re-
3 viewed at least annually.

4 “(3) Notwithstanding any law or rule of procedure,
5 any aggrieved person, corporation, or unincorporated asso-
6 ciation residing or present in the political subdivision in
7 which a tax is imposed under this subsection shall have
8 the right to intervene in any proceeding concerning the
9 tax. Such interveners shall have the right to present evi-
10 dence and appear before the court to present oral and
11 written testimony, and to appeal any finding required to
12 be made by this action, or any other action taken to im-
13 pose, increase, or levy, or assess taxes to remedy depriva-
14 tions of Federal or State rights.

15 “(4) These findings by a district court as aforesaid
16 shall apply to those situations wherein parties enter into
17 an agreement with or without court approval and notwith-
18 standing the fact that litigation has not commenced.

19 “(c) TERMINATION.—Notwithstanding any law or
20 rule of procedure, any imposition, increase, levy, or assess-
21 ment of a tax shall—

22 “(1) automatically terminate or expire after 1
23 year, from the date of the imposition or from the
24 date of the enactment of this statute upon which the

1 court shall make the findings required by subsection
2 (b); and

3 “(2) terminate at any time if the court deter-
4 mines that the deprivation rights has been cured to
5 the extent practicable.

6 “(d) STATE PRE-EMPTION.—Notwithstanding any
7 law or rule of procedure, this statute does not pre-empt
8 State or political subdivision from imposing such and fur-
9 ther restrictions on the use of State and local taxes, levies,
10 or assessments for the purposes set forth herein.

11 “(e) STATE AND LOCAL GOVERNMENTAL RIGHTS.—
12 Nothing contained herein shall allow a Federal court to
13 use a tax of any kind of a State or political subdivision
14 for the purpose of funding such order, except to the ex-
15 tent, if any, and to the proportion, if any, that such taxes,
16 levies, or assessments may already be used for the funding
17 of the object of the order as allowed by State or political
18 subdivision law. Furthermore, the Federal court has no
19 jurisdiction to force, mandate, or compel a taxing body
20 of a State or political subdivision to change or modify its
21 tax laws so as to enlarge them to pay for an order by
22 the Federal court.

23 “(f) FINDINGS.—Finding required to be made by this
24 section shall be completed by the court prior to the begin-
25 ning of the fiscal year for the political subdivision against

1 which a tax imposition, increase, levying, or assessment
2 is ordered, and shall be transmitted to such political sub-
3 division.

4 “(g) RULES OF CONSTRUCTION.—There is a pre-
5 sumption that the imposition, increase, levying, or assess-
6 ment of taxes is not a narrowly tailored means of remedy-
7 ing deprivations of Federal or State rights.”

8 In the event the Supreme Court finds that the use
9 of a judicial tax, levy, or assessment by a Federal judge
10 is illegal or unconstitutional, nothing contained herein
11 shall be construed to otherwise make legal, validate, or ap-
12 prove of a judicial tax, levy, or assessment.

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